

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No: 2:22cr25

vs.

SAMUEL OGOSHI,
SAMSON OGOSHI,

Defendants.

Before:

THE HONORABLE RAY KENT
U.S. Magistrate Judge
Grand Rapids, Michigan
Friday, September 1, 2023
Detention Hearing Proceedings

APPEARANCES:

MR. MARK A. TOTTEN, U.S. ATTORNEY
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On behalf of the Plaintiff;

FEDERAL PUBLIC DEFENDER
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On behalf of Samuel Ogoshi.

1 Willey & Chamberlain LLP
2 MS. JULIA ANNE KELLY
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6 On behalf of Samson Ogoshi.

7 TRANSCRIBED BY: MR. PAUL G. BRANDELL, CSR-4552, RPR, CRR
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09/01/2023

10:56 a.m.

THE CLERK: The United States District Court for the Western District of Michigan is now in session. The Honorable Ray Kent, United States Magistrate Judge, presiding.

THE COURT: This is 22cr25, United States versus Samuel and Samson Ogoshi. Mr. Reust, Mr. Mekaru on behalf of the United States. Mr. Tilton on behalf of Samuel. Ms. Kelly on behalf of Samson. We're here for a bond hearing that has been scheduled for each of the Defendants. I have received the United States' detention memo. Appears in the Court's record ECF 41 and the lengthy exhibits attached thereto. I have read and/or reviewed those, including the handwritten statements provided to me here this morning right before we were to begin. I have also read Defendant's motion for bond in Samson's case that would be ECF 36, and in Samuel's case it would be ECF 35.

In addition, I have read the pretrial services reports in Samson's case. That would be ECF 32, and Samuel, ECF 33.

Following the investigation, and granted, the investigation was short, given the geography of the situation, pretrial services is recommending that I order both Samuel and Samson to be detained.

Gentlemen, we are going to have a bond hearing here in a moment. There are two issues at play in a bond hearing. One is risk of nonappearance. The other is danger to the

1 community. The government has the burden of proof on both of
2 those issues. On the issue of risk of nonappearance, the
3 government's burden is something we call a preponderance of the
4 evidence. That means there is just slightly more evidence
5 suggesting somebody is a risk of nonappearance than evidence to
6 the contrary.

7 On the other issues, danger to the community, the
8 government's burden is a heavier one, something we call clear
9 and convincing evidence, and requires more evidence by the
10 government.

11 A couple things about a bond hearing. The rules of
12 evidence that apply in a trial do not apply in a bond hearing.
13 So things like hearsay evidence, which would not be admissible
14 if we were having a trial, are admissible in a bond hearing.
15 In fact, even if the government collected evidence against you
16 illegally, and at this point I have no reason to believe that
17 it did, that evidence would probably come in for our purposes
18 here today.

19 Moreover, neither the government nor you have to
20 produce evidence by putting witnesses on the witness stand.
21 You can do it instead using a procedure we call a proffer.
22 What that means is the lawyers tell me facts which I then
23 consider as if they had come from a witness on the witness
24 stand.

25 Are there -- before we get rolling here, are there

1 preliminary matters that we should take up, Mr. Reust?

2 MR. REUST: Not from the government's perspective,
3 Your Honor. Everything the Court just said is the way that the
4 government would intend to proceed.

5 THE COURT: Mr. Tilton?

6 MR. TILTON: Your Honor, I did make an argument in
7 Samuel Ogoshi's pretrial or bond motion requesting that the
8 Court direct the government to produce evidence at least
9 originated in Nigeria, by witness testimony. Under the Stone
10 case the Court has the discretion to allow the parties to
11 proceed by proffer or require testimony. Essentially the basis
12 of our -- our argument to require testimony here is because of
13 Nigeria's generally considered to be corrupt criminal justice
14 system. Mr. Ogoshi and his brother were held for a period of
15 time, according to their Nigeria lawyer, that went against
16 Nigeria law.

17 THE COURT: They were held for months.

18 MR. TILTON: Correct. Before that they had an
19 attorney. The government produced some written statements from
20 both Defendants today. There were four statements that were
21 produced -- that were attributed to Samuel Ogoshi, three prior
22 to the FBI's interview in Nigeria.

23 So I think that there are concerns here about the
24 circumstances under which those statements were taken, and the
25 Court does have an obligation to look at both the reliability

1 and the accuracy of the evidence that the government produces,
2 and the Defendant, whether by proffer or by witness testimony,
3 and so I think that the Court has authority and discretion to
4 consider that the evidence from Nigeria, just based upon its --
5 its originating from Nigeria, and the circumstances of a number
6 of written statements without counsel, that the Court should be
7 concerned and require more information than simply a proffer
8 from the government.

9 THE COURT: All right. Thank you. Thank you,
10 Mr. Tilton.

11 Ms. Kelly, do you wish to be heard on this issue?

12 MS. KELLY: Thank you, Your Honor. Just briefly and
13 specifically in relation to Exhibits 10 and 11 that we received
14 this morning. I -- I would join in Mr. Tilton's objection to
15 proceeding with those exhibits specifically. They are
16 handwritten. In reviewing them it appears that there were two
17 different handwriting, two different authors. I don't know who
18 those were. I don't have any of the circumstances, and I am
19 not going to be able to -- to get more clarification on that.
20 So I would object to -- to those being admitted by proffer
21 only. Thank you.

22 THE COURT: All right. Ms. Kelly, I'll tell you, I
23 thought -- maybe I am dead wrong, but I was assuming they were
24 written by your clients, but I don't know.

25 MS. KELLY: I know my client's name is on it. I am

1 talking about the -- the first paragraph, if the Court would
2 look at it, compared to the other written statements, it
3 appears that there is two different handwriting going on there.
4 So I don't know who that would be, and I don't know how these
5 were taken.

6 Obviously, this Court has reviewed Samson Ogoshi's
7 statements. The first one given is a complete denial, and then
8 there is another one written out that same day. So I would
9 take issue with those being admitted by proffer only.

10 THE COURT: All right.

11 MS. KELLY: Thank you.

12 THE COURT: You are welcome.

13 Mr. Reust?

14 MR. REUST: Thank you, Your Honor.

15 The first thing I'd note, and the primary thing that I
16 highlight in the government's response by this request by the
17 Defense is that the Defendants speak generally about what they
18 claim are conditions in Nigeria, but they nowhere say that they
19 were forced or coerced to make these statements, and in fact,
20 you know, turning to Exhibits 10 and 11, which admittedly we
21 did just receive this morning as well, which is why we hadn't
22 had the opportunity to give them to Defense counsel or the
23 Court before then, but those statements began with a statement
24 that they are made voluntarily.

25 Additionally, the law is quite clear that statements

1 made in a foreign country to foreign officials, first, don't
2 have to be Mirandized, and two, can be considered even as
3 substantive evidence at trial in the case, and I can cite
4 several circuit cases to the Court that would indicate that as
5 well.

6 The other thing that I would point out to the Court is
7 that the statements they make are corroborated by a significant
8 amount of additional evidence. It's not like we are
9 considering those statements that they made in a vacuum. There
10 was evidence obtained from their phones when they were in
11 Nigeria. There is significant evidence from the United States
12 and legal process in the United States that corroborates the
13 statements that they made. And the fact is just that those
14 witnesses that would be for the government from Nigeria aren't
15 here. The entire reason why the rules of evidence don't apply
16 at this proceeding are because we -- this is just not the time
17 to litigate this issue of whether these statements are
18 admissible. The briefing schedule on something like that,
19 which is a dispositive motion, would be months, and will likely
20 be months if the Defendants wish to suppress those statements
21 later on. And they don't want to take that time. They asked
22 for the hearing to be today. So I would ask that the Court
23 do -- does at least consider these statements, give them
24 whatever weight it believes is necessary or appropriate, and
25 just consider them in the context of the other evidence the

1 United States intends to proffer.

2 THE COURT: All right. Thank you, Mr. Reust.

3 Mr. Tilton?

4 MR. TILTON: May I offer one quick rebuttal, Your
5 Honor?

6 THE COURT: Yes.

7 MR. TILTON: Your Honor, the -- the Court and the
8 government can proceed using hearsay evidence. I -- I would
9 note that as we -- with concerns with these statements and the
10 conditions that they were taken under, particularly -- well, I
11 would say all statements in Nigeria, whether they were to the
12 FBI or to Nigerian authorities, the FBI sent communications to
13 the Nigerian government to arrest Mr. Ogoshi, both Ogoshis and
14 four other individuals, and at the time of that communication
15 they said that six individuals -- excuse me, that a team of two
16 case agents, investigative analysis, a member of the FBI's
17 computer analysis response team, a supervisory special agent
18 and the Assistant United States Attorney prosecuting the case
19 will all be traveling to Nigeria in January of this year. So I
20 don't think that we are asking that it has to be a Nigerian who
21 was present for all of these statements, but perhaps an FBI
22 agent who traveled on that team to Nigeria and could testify
23 about the conditions the Ogoshis were held in and when they
24 arrived on the date of July -- January 22nd, as to the state
25 that they did. They would have been in Nigeria for both Samson

1 Ogoshi's arrest and a number of statements made by Samuel
2 Ogoshi. Thank you.

3 THE COURT: You are welcome. I guess it occurs to me
4 that if -- you know, and I have no reason to dispute
5 Mr. Tilton's representations about the Nigerian legal system
6 and the state of affairs in Nigeria, but if a suspect can be
7 coerced into admitting to wrongdoing, he could certainly be
8 coerced into saying that he is giving the statement
9 voluntarily. So I don't find much weight in the fact that in
10 the statement, at least I recall Samuel -- Samuel was
11 voluntary, and that he had been treated well and had been fed
12 and was not being abused. I mean, all of those things could be
13 coerced, and nobody in this room knows -- well, I don't know if
14 nobody. I don't know what pressures may have been brought to
15 bear on either of these Defendants prior to their interviews by
16 the FBI agents or during those -- not accusing the FBI of
17 anything, but in conjunction with those interviews or after
18 those interviews.

19 Having said that, though, I agree with Mr. Reust that
20 the Defendants' remedy here, if, in fact, there is evidence
21 that the statements were coerced or that there were
22 irregularities under United States law in a way that Samuel and
23 Samson were treated, the remedy is to bring a motion to
24 suppress, or a remedy -- I am not suggesting it's the only
25 remedy, but a remedy would be a motion to suppress the

1 statements for consideration by the District Judge in this
2 case.

3 For purposes of today's hearing, though, I am going to
4 allow the government and the Defendants to proceed by proffer.
5 Anything else we should take up before we get started,
6 Mr. Reust?

7 MR. REUST: Not from the government's perspective.

8 THE COURT: Mr. Tilton?

9 MR. TILTON: No, Your Honor. Thank you.

10 THE COURT: Ms. Kelly?

11 MS. KELLY: No, Your Honor. Thank you.

12 THE COURT: All right. Mr. Reust, the burden of proof
13 is on you. The floor is yours.

14 MR. REUST: Thank you, Your Honor.

15 I would just begin by moving to admit Government's
16 Exhibits 1 through 11? I think they are largely in the record
17 and my understanding is that the Defense has no objection to
18 the Court considering them.

19 THE COURT: Objections to the admissions of the
20 exhibits, Mr. Tilton?

21 MR. TILTON: No, Your Honor. Thank you.

22 THE COURT: Ms. Kelly?

23 MS. KELLY: No, Your Honor.

24 THE COURT: They are admitted.

25 MR. REUST: Thank you, Your Honor.

1 So by way of proffer, on March 25th of 2022, police
2 responded to the home of a 17 year old high school boy who had
3 died from a self-inflicted gunshot wound. That boy is
4 identified as victim 1 in the indictment.

5 Later that same day, March 25th of 2022, victim 1's
6 girlfriend received a collage of images on her Instagram
7 account from a user with the user name dani.robertts. The
8 collage included nude and clothed images of victim 1. The
9 dani.robertts account told victim 1's girlfriend, quote,
10 cooperate with me, end quote. Victim 1's girlfriend continued
11 to speak with this dani.robertts account for a short period of
12 time. Informed the dani.robertts account that victim 1 had
13 taken his own life, and eventually stopped responding to the
14 account and reported the information to the police.

15 Using that information police obtained a search
16 warrant for the Instagram account dani.robertts. Exhibit 1 is
17 a copy of the profile photo used for the dani.robertts account.
18 Exhibit 2 is a copy of a conversation between the dani.robertts
19 account and victim 1 on March 24th and 25th of 2022.

20 The first several pages are introductory conversation
21 and include the dani.robertts account trying to make victim 1
22 comfortable. In page ID 54 in the record, victim 1 tells
23 dani.robertts that he is 17 years old. On page ID 57,
24 dani.robertts tells victim 1 that she likes, quote, hanging out
25 with friends and playing sexy games, end quote. The

1 dani.robertts account then aggressively tries to get victim 1
2 to engage in what it calls, quote, sexy picks, over about the
3 next 15 pages of Exhibit 1.

4 At page ID 73, dani.robertts got the pictures she
5 wanted and immediately sends this message. Quote, I have
6 screenshot all your followers and tags can send this nudes to
7 everyone and also send your nudes to your family and friends
8 until it goes viral. All you have to do is cooperate with me
9 and I won't expose you.

10 The dani.robertts account follows that up with, I got
11 all I need RN, which means right now, and then goes onto say,
12 to make your life miserable dude, end quote.

13 Over about the next 40 minutes the dani.robertts
14 account hounds victim 1 relentlessly. On page 1102 of that
15 exhibit, Exhibit 1, it threatens to release the images
16 following a countdown. Pages 1103 and 1104 it says, quote,
17 just try to act smart with me and I am going to make sure all
18 your family members see this.

19 Page 1107, watch how I make your life miserable, end
20 quote.

21 Page ID 128, victim 1 pays \$300, which was the agreed
22 upon amount with the dani.robertts account. On page ID 144,
23 victim 1 is begging for dani.robertts to delete the photo
24 collage after paying the \$300, but dani.robertts asks for more
25 money, now \$800. Victim 1 responds that he doesn't have it.

1 On page ID 147, dani.robertts begins another countdown from 10
2 down to 1.

3 On page ID 150, victim 1 has shown dani.robertts a
4 photo of his bank account with \$55 in it, and offers to pay
5 everything he has. The dani.robertts account responds, quote,
6 no deal, end quote.

7 On page ID 155, victim 1 pleads with the account.
8 Dani.robertts responds, lol, I love this, end quote.

9 On page ID 158, the dani.robertts account says, quote,
10 I am going to start trending soon, end quote.

11 On page ID 162, victim 1 asks, why are you doing this
12 to me? The dani.robertts account responds because, it's going
13 to be your worse night marrow, presumably nightmare, end quote.

14 On page ID 172, victim 1 says, I am begging for my own
15 life, end quote. On page ID 188, the dani.robertts account
16 starts yet another countdown from 10.

17 On page ID 193, the dani.robertts account says, quote,
18 I bet your GF will leave you for some other dude, end quote.

19 On page ID 195, the dani.robertts account says, quote, just
20 waiting for your GF to get the text, end quote, and then goes
21 onto say, quote, you know what will happen. Victim 1 responds,
22 I will be dead. Like I want to KMS, end quote. The
23 dani.robertts account responds, sure. I want you to be dead,
24 end quote.

25 On page ID 198, victim 1 says he can't pay anymore

1 money, and dani.robertts, the account says, quote, okay, then I
2 will watch you die a miserable death, end quote.

3 On page ID 201, victim 1 says, quote, it's over. You
4 win bro, end quote. The dani.robertts account responds, quote,
5 okay. Good-bye. Enjoy your miserable life, end quote. Victim
6 1 responds, I am KMS RN. BC of you, end quote, meaning, I am
7 killing myself right now because of you. The dani.robertts
8 account responds, good. Do that fast.

9 Page ID 202, the dani.robertts account says, or I'll
10 make you do it, I swear to God, end quote.

11 FBI analyzed that account, the dani.robertts account,
12 and saw that in a message to someone else the dani.robertts
13 account instructed that person to contact them at their
14 personal account which was a gmail account
15 hofinghammark@gmail.com, FBI obtained the search warrant for
16 that account and it had an e-mail to frostsamuell14@gmail.com
17 with a photo of Samuel Ogoshi, Samson Ogoshi and two other
18 people.

19 FBI then obtained a search warrant for the
20 frostsamuell14@gmail.com account, and analyzing that account the
21 FBI determined that it appeared to be Samuel Ogoshi's primary
22 e-mail account. In it, the gmail return, there was a note that
23 appeared to be the same or similar to the extortion demand used
24 in the texts to victim 1. That note reads, quote, hey I have
25 screenshot all ur followers and tags and those that comment on

1 ur post. I can send this nudes to everyone and also send your
2 nudes Until it goes viral....All you've to do is to cooperate
3 with me and I will not expose you, end quote.

4 The account also -- the same gmail account also
5 contained numerous images of other sextortion victims contacted
6 by the dani.robertts Instagram account, and one of those was
7 the collage sent by -- sent to victim 1. The account also
8 included Google search history and agents found evidence of the
9 searches following victim 1's death. Exhibit 3 is some of
10 those searches that were shown to Samuel Ogoshi during his
11 interview with the FBI in Nigeria.

12 Page ID 204, there is a search for Michigan suicide.
13 Page ID 205, there is a search for Instagram blackmail death.
14 Page ID 206, there is a search for how can FBI track my IP from
15 another country.

16 There are additional searches in the Google history
17 that were not shown in the Exhibit 3, that include how to hide
18 my IP address without VPN? How your IP address can be traced?
19 How can FBI track my IP from another country, and how to clear
20 your IP address on Instagram? These were all made on April
21 1st, 2022.

22 FBI agents identified a list of additional telephone
23 numbers and e-mail addresses that were associated with a
24 dani.robertts Instagram account. Agents subpoenaed Google and
25 Apple requesting any accounts linked to the e-mails and

1 telephone numbers. One of the phone numbers was used to
2 register an Apple account, specifically a FaceTime account with
3 the Apple ID of ogoshisamsonzero@gmail.com. In the FBI's
4 analysis, this appeared to be Samson Ogoshi's primary e-mail
5 account, and this appeared to be his primary Apple ID account
6 as well. Twelve images -- and it contained 12 images of
7 dani.robertts including the Instagram profile image used for
8 dani.robertts were found in that iCloud account.

9 Further, there was a screen capture of calls made in
10 Instagram in Samson Ogoshi's iCloud account that shows calls
11 made from the dani.robertts account to who has been identified
12 in the indictment as victim 2. Agents went back to the
13 dani.robertts Instagram return and analyzed the statements to
14 victim 2, and those are Government's Exhibit 4. The first few
15 pages show introduction in trying to make victim 2 feel
16 comfortable.

17 Page ID 211, the dani.robertts account says, sometimes
18 I play erotic near pic exchange lol, end quote. Eventually the
19 dani.robertts account received a nude photo from victim 2. On
20 page ID 223 to 224, the account then responds, quote, I have
21 screenshot all ur followers and tags and send this nudes to
22 everyone and also send your nudes to your family and friends
23 until it goes viral. All you have to do is cooperate with me
24 and I won't expose you, end quote.

25 Page ID 225, quote, cooperate with me and I won't

1 expose u, and then begins a count down at 10. Page ID 228,
2 quote, you are going to regret ever acting smart were me, end
3 quote. Quote, just don't pay me, end quote. And then another
4 quote, MC I am gonna F you up. The F word is included in
5 there, end quote.

6 Page ID 235, victim 2 indicates he doesn't have the
7 money. And that dani.robertts account responds, enjoy your
8 miserable life dude, end quote.

9 Paged 238, victim 2 again says he doesn't have the
10 money, and that dani.robertts account responds quote, haha, I
11 love this, end quote.

12 On paged 240 the dani.robertts account responds, your
13 family are going to regret they ever had you when I am done
14 with you, end quote, and then quote, you choose money over life
15 right now, end quote.

16 Paged 255, the dani.robertts account says, dude don't
17 play games with me. I am dangerous, end quote. And on page
18 261 it says, quote, I will make you regret your life. I will
19 make you commit suicide, end quote.

20 In analyzing Samson Ogoshi's iCloud account agents
21 also found additional nude images of victim 2 and nude images
22 of multiple other boys including at least two other minors.
23 Those minors were interviewed and acknowledged being sextorted
24 over Instagram in much the same way victim 1 and victim 2 were.

25 On January 17th, 2023, Samuel Ogoshi was arrested by

1 the EFCC, and he made statements to Nigerian police. Those
2 states are -- were handwritten and contained in Government's
3 Exhibit 10. At the beginning Samuel Ogoshi says, I am not
4 obligated to say anything unless I wish to do so, but whatever
5 I say shall be taken down in writing and may be given in
6 evidence. I freely would like to state thus follows. I have
7 been informed of my right to my lawyer before making these
8 statements, but in the absence of my lawyer I wish to continue
9 with the making of my voluntary statement.

10 It goes onto say later on the bottom of that page, I
11 started on-line romance dating scam in the year 2022 January.
12 I do my on-line romance scan by creating an Instagram profile
13 with a foreign girl's name and download good profile pictures
14 of foreign girls on Instagram and use the Instagram profile to
15 follow boys having used my downloaded picture as my profile
16 picture on Instagram. Then I text them on Instagram and ask
17 them to exchange nudes with me. I send them downloaded nudes
18 which is not mine, and I ask for their own nudes, which they
19 will send to me. After collecting their nudes I now proceed to
20 blackmail them.

21 On January 24th, Samson -- of 2023, Samson Ogoshi was
22 arrested by Nigeria -- in Nigeria, I'm sorry, by the EFCC.
23 Exhibit 11 is a copy of Samson's handwritten statement. It
24 begins, quote, I have -- I, Samson Ogoshi, having been duly
25 cautioned in English language that I am not obligated to say

1 anything unless I wish to do so, but whatever I say shall be
2 taken down in writing and may be given in evidence, I freely
3 and voluntary wish to state as follows.

4 It goes on with the third page of this exhibit to say
5 my brother, Samuel Ogoshi, taught me Internet frauding for some
6 months ago. Blackmailing is the only type of Internet fraud I
7 do. I do blackmailing by first getting Instagram account, edit
8 it to name -- to look like a U.S.A. citizen and upload a female
9 picture as the profile.

10 Then it says, first of all -- it's handwritten, so
11 somewhat difficult to read. Chat and ask them if they want to
12 exchange nudes. They exchange each other and blackmail them
13 for money. By nudes I mean naked picture. I cannot remember
14 the number of people that I blackmail.

15 On February 8th of 2023, FBI agents traveled to
16 Nigeria and interviewed Samuel Ogoshi and Samson Ogoshi and the
17 reports of those interviews are contained in Exhibit 7 as well
18 as the waivers that they were given acknowledging that they
19 understood they have the right to an attorney, didn't have to
20 speak to the agents regardless of what they had done before.

21 During that interview Samuel Ogoshi stated he
22 purchased the Instagram accounts that were used for blackmail.
23 He targeted men and boys pretending to be college-aged girls.
24 He solicited nude photos from victims, put those photos in
25 collages and extorted his victims for money. He created the

1 account with the name dani.robertts. He claimed that he and
2 Ezekiel Robert, which is the third Defendant in the indictment,
3 worked together in the extortion of victim 1, but notably as an
4 aside, the FBI analysis of the dani.robertts account, all the
5 associated devices with the investigation, and the other gmail
6 and iCloud accounts associated with the investigation, indicate
7 that Samuel was the one controlling the dani.robertts account
8 at the time of victim 1's death.

9 Samuel Ogoshi also stated that he learned after victim
10 1's death and told Samson Ogoshi about it. Samuel Ogoshi
11 stated that after learning of victim 1's death he stopped
12 engaging in extortion for a period of time but then he returned
13 to doing it again.

14 When Samuel Ogoshi was originally arrested the EFCC
15 had seized his phone and agents analyzed that phone and at the
16 time of arrest it contained additional sextortion images and
17 collages that appeared to have been created shortly before his
18 arrest and leading up to his arrest.

19 FBI also interviewed Samson Ogoshi that day, and the
20 report of that interview is Exhibit 8. It contains the same
21 waiver and the advice of rights that were given to Samuel
22 Ogoshi.

23 Samson told police that he had been involved in the
24 fraud for about a year. He said that Samuel bought Instagram
25 accounts and that he then used. He described -- described the

1 scheme as using the image of a female porn star and then
2 contacting men and boys to get them to send nude images and
3 then demanding money. He stated that he made good money from
4 his blackmail. He stated he was shown images of nude males
5 from his account. He said he didn't recognize them but that if
6 they were in his account that he was involved in their
7 blackmail.

8 He stated that he had learned of victim 1's death from
9 Samuel and that he had also had stopped engaging in sextortion
10 for a short while but then resumed.

11 The EFCC had also seized Samson Ogoshi's phone when he
12 was arrested, and an analysis of that phone indicated that it
13 had continued to engage in sextortion because there were
14 additional collages and images that appeared to have been
15 created shortly before his arrest.

16 On August 12th and 13th of 2023, FBI agents
17 transported Samuel and Samson Ogoshi both from Nigeria to Grand
18 Rapids, Michigan. In doing so the Department of Homeland
19 Security Immigration and Customs Enforcement or ICE, placed
20 detainers on both Samuel Ogoshi and Samson Ogoshi. Exhibit 5
21 is a copy of the detainer for Samuel and Exhibit 6 is a copy of
22 the detainer for Samson.

23 Immigration and Customs Enforcement Assistant Field
24 Officer Director Todd Osborne has provided an affidavit that if
25 the Defendants were released on bond ICE would detain them and

1 begin deportation proceedings. That is recorded in Director
2 Osborne's declaration, which is Government's Exhibit 9.

3 I also spoke to U.S. Probation Officer Thomas Mize,
4 who informed me that if the Defendants were given pretrial
5 release to a local facility it would likely be the Alternative
6 Directions facility. He spoke with the director of that
7 facility who indicated that it allows residents to have access
8 to Internet capable phones in common areas and in their rooms.
9 Officer Mize also confirmed that to his knowledge every
10 facility that's available to the probation office that houses
11 pretrial releasees has those same allowances.

12 That is all the information that I have to proffer at
13 this time, Your Honor. Thank you.

14 THE COURT: Okay. Mr. Tilton, Ms. Kelly?

15 MR. TILTON: Thank you, Your Honor.

16 Your Honor, I am going to start by proffering
17 background information about Samuel Ogoshi. The information is
18 contained in both the pretrial services report and in the --
19 Mr. Samuel Ogoshi's motion and brief for pretrial release.

20 The information was provided either by Mr. Ogoshi
21 directly to the pretrial services officer or it was provided
22 directly to me and my investigator by Samuel Ogoshi's brother,
23 mother and attorney, and that is Samuel Ogoshi is a 22 year old
24 college student in his second year at Nasarawa State University
25 in Nigeria studying sociology.

1 He is a native of Nigeria. Has never left the country
2 until his extradition in this case. He does not have a
3 passport. He does not have any prior arrests or convictions,
4 which is also corroborated by the government's initial pretrial
5 statement which lists no criminal history for Mr. Ogoshi.

6 He doesn't -- he has never been to jail prior to this
7 arrest, and he relies on his parents for financial support and
8 does not have any assets. His family is middle class in
9 Nigeria, which would not support their -- their income there
10 would not support a middle class life-style here or the assets
11 to provide to him to flee to Nigeria. Mr. Ogoshi's father is a
12 retired member of the Nigerian military. He receives a
13 pension. His mother owns a small business selling soft drinks
14 out of their apartment to their neighbors.

15 Mr. Ogoshi's entire family has never traveled outside
16 of Nigeria and does not have passports. They all live within
17 Lagos, Nigeria, or the Nasarawa State, which is kind of in
18 Central Nigeria.

19 Mr. Ogoshi has never used illicit drugs. He has not
20 used alcohol in years, and he is in good physical health and
21 not -- does not have any mental health issues. He and his
22 family are christians. They attend a local church in Lagos
23 three times per week and he has attended that church for his
24 entire life.

25 His family is tight knit. We have been in close

1 contact with his brother in particular, who has been the
2 spokesperson for his family, but he is also close to his
3 parents as well. His family remains supportive of him, as does
4 his -- well, his family remains supportive.

5 We are -- and as stated in our brief, we are seeking
6 release to a halfway house if he were released. The Court
7 would be obligated to impose the specific conditions under the
8 Adam Walsh Act, and we have no objection to additional
9 conditions as the Court sees necessary, including that he not
10 be allowed to possess a cell phone or access to the Internet.

11 That's the category of information about Mr. Ogoshi
12 himself. As far as information about where he might spend his
13 time, I also spoke to the pretrial services department about
14 where he might be placed. We would be specifically requesting
15 Alternative Directions, but it would -- have no objection if
16 the Court placed Mr. Ogoshi in a different facility. But I did
17 talk to U.S. Probation Officer Ben Schultz, who is here in
18 court today. He provided me with information about Alternative
19 Directions and also provided me their current cell phone
20 policy.

21 What he did state, as the Court -- as I think the
22 Court is well aware, the Court could impose a condition that
23 Mr. Ogoshi not have Internet access or not have a phone while
24 on bond, and that condition could be monitored by Alternative
25 Directions.

1 Mr. Ogoshi would have a case manager at Alternative
2 Directions. At least one of the current case managers there is
3 a former United States Probation Officer. That case manager
4 would know his bond conditions, and his bond conditions could
5 be conveyed to other staff within Alternative Directions.

6 Alternative Directions does have a cell phone policy
7 that says that all probations and parole stipulations still
8 apply, i.e., phone restrictions, to contact orders, et cetera.
9 So I am not sure if I completely understood the government's
10 argument about the ability of probation or pretrial services to
11 restrict cell phone use through conditions of bond, but to the
12 extent that the Court imposes a condition that he cannot have
13 Internet access or cell phone use, Alternative Directions would
14 be able to honor that condition.

15 Additionally, I have some case information about other
16 cases where the government has not opposed bond in an extortion
17 case, and then a child pornography case. I think that
18 information I provided to the government is probably better
19 left for argument, but I can go into that information now if
20 the Court wants to hear it.

21 THE COURT: No. You can wait for argument.

22 MR. TILTON: Thank you.

23 THE COURT: Ms. Kelly, before I hear from you,
24 Mr. Reust, can't I impose a condition that the Defendants not
25 have phones at AD?

1 MR. REUST: You can impose that condition, Your Honor.
2 As the government states in its brief, the Court then basically
3 has to hope that that is followed by the Defendants, and these
4 are Defendants that learned about, you know, a child taking his
5 own life because of their blackmail and continued to do it.

6 Additionally, I would just say even in Alternative
7 Directions, at any pretrial release facility there is no way
8 for the facility administrators to watch the Defendants 100
9 percent of the time.

10 And last, something I don't raise in the brief but
11 that I thought about some since writing it, is I think there is
12 a serious risk just that the Defendants pose of blackmailing
13 the other releasees or other people at these facilities. These
14 are the Defendants who disregarded the life and the loss of
15 life of a young child, and they did this because they wanted
16 money very bad. There is no reason to believe that they would
17 not be willing to extort other releasees to obtain money that
18 they would otherwise have no way to obtain.

19 THE COURT: Thank you, Mr. Reust.

20 Ms. Kelly?

21 MS. KELLY: Thank you, Your Honor.

22 I'll try not to duplicate all the information that
23 Mr. Tilton just provided by the Ogoshi family.

24 THE COURT: Thank you.

25 MS. KELLY: But with respect to Samson Ogoshi I'll

1 also rely on the pretrial services report that was written. I
2 submitted an Exhibit A that was a documentation that Simian
3 Ogoshi provided in regards to Samson's educational record. I
4 also would note that Simian Ogoshi is -- has joined the Court
5 here in watching the proceedings from Nigeria as a supportive
6 family member.

7 Samson Ogoshi is 20 years old. He also has no prior
8 criminal history. No run-ins with any sort of legal issues.
9 He did graduate from secondary school and was preliminarily
10 accepted into the same college that Samuel was attending.
11 Simian also attended that same college and graduated with
12 honors.

13 Samson has never traveled outside of Nigeria. No one
14 in the family has traveled outside of Nigeria. Samson has no
15 relatives in the United States. Samson has no reported health
16 issues, no mental health issues, no children, and has never
17 used any controlled substances. He also is a member of the
18 church that the family goes to, and has been a dutiful son to
19 his family. He was living at home at the time of his brother's
20 arrest.

21 Samson also was told to report to the EFCC. I am
22 getting additional information that that was on January the
23 24th. Samson did appear at the EFCC as told, and apparently
24 participated in investigations and statements there.

25 Samson has not had any disciplinary issues since his

1 arrest.

2 Getting to the point that Mr. Reust just brought up,
3 he has had the opportunity now for nine months to do some sort
4 of extortion and he hasn't, so I don't think that that would
5 change.

6 He has no income or financial support, has no
7 passport, no travel document. He has no way to -- to get out
8 of the country. His family also do not own passports so they
9 have no way to get into the country.

10 I am also, on behalf of Samson, requesting this Court
11 to release him to a halfway house. I think that would be
12 appropriate with any other conditions that this Court would
13 want to add, including a tether, including no contact on a cell
14 phone, and -- and not having that access to the cell phone. I
15 think that is easily monitored by Alternative Directions. I
16 certainly have been present for supervised release violations
17 where someone has access to a phone and they shouldn't at
18 Alternative Directions. So certainly I think that that is
19 something they can monitor closely. And with that, I will
20 submit and then save my argument.

21 THE COURT: Thank you.

22 MS. KELLY: Thank you.

23 THE COURT: Mr. Reust, argument?

24 MR. REUST: Your Honor, the Defense in this case
25 evidenced a complete disregard for human life, in this case,

1 specifically the life of a 17 year old boy. They learned about
2 his death. We know not only from what they told police but
3 also from Samuel Ogoshi's search history where he is Googling
4 and trying to find out more information about that, and we know
5 that after they learned about the victim 1's death they
6 continued to engage in the exact same kind of activity that led
7 to victim 1's death. They went back to sextorting men and
8 young boys so that they could obtain more money.

9 Yes. The Defendants argue that their goal here was to
10 obtain money, but to get that money they were willing to go to
11 any -- any extreme necessary to get it, and there are simply no
12 conditions that the Court could place at Alternative Directions
13 or any other facility that would protect the community here in
14 West Michigan from the danger that they pose. They knew about
15 this death and continued to engage in the exact same kind of
16 conduct.

17 Additionally, the thing that Ms. Kelly stated at the
18 end of her proffer just confirms that Alternative Directions
19 just simply doesn't have any way to make sure that the people
20 that are there never get access to a phone. There are
21 violations of that policy and Alternative Directions has to
22 respond to that. I think all of us have been present for
23 supervised release violations and different things where that
24 has been a case and -- and an allegation. So there is simply
25 no condition the Court could place that would keep them from

1 getting access to those devices.

2 And with the device, with an electronic device that
3 are Internet capable, these Defendants could engage in the same
4 exact same kind of sextortion that they engaged in before.
5 There is no reason to believe that they wouldn't or that they
6 couldn't. All it would require is an Instagram account, which
7 isn't difficult for them to get and to use.

8 Additionally, Your Honor, I think every factor that
9 the Court is supposed to consider -- consider under 3142 also
10 indicates that the Defendants pose a serious risk of
11 nonappearance. Both of the proffers that we just heard from --
12 about both Samuel and Samson indicate that they have no ties to
13 this community. They have no family in this community. Yes,
14 they have no money, but -- and they don't have the ability
15 necessarily to get back to Nigeria, but they have every reason,
16 knowing that they are facing, in Samuel's case, potential
17 mandatory minimum sentence of 30 years, and in Samson's case a
18 potential mandatory minimum sentence of 15 years, they have
19 every reason to flee and to just disappear, being free
20 somewhere in the United States where they could return to
21 blackmail. Obviously, they couldn't have real employment
22 because they don't have papers. Free to blackmail and to make
23 money and to not be in custody.

24 So Your Honor, in the United States position these
25 Defendants both pose a serious danger because of the complete

1 disregard that they had for the life of a boy in West Michigan
2 that took his own life, and continuing to engage in that
3 conduct, and they pose a significant risk of nonappearance for
4 the very reason that they can have absolutely no ties to
5 Western Michigan. They are not here because they wanted to be.
6 They are here so that they can face trial, so that they can
7 face the accusations that have been brought against them.
8 Thank you, Your Honor.

9 THE COURT: You are welcome.

10 Mr. Tilton?

11 MR. TILTON: Thank you, Your Honor.

12 Your Honor, I think it's important to -- to start with
13 the standard here that the Court must evaluate whether or not
14 to -- to grant release, because I think in the government's
15 argument it was applying a higher standard than -- than
16 actually applies. The statute says the judicial officer shall
17 order the pretrial release of the person subject to the least
18 restrictive further condition or combination of conditions that
19 such judicial officer will reasonably assure -- or excuse me,
20 judicial officer determines will reasonably assure the
21 appearance of the person as required and the safety of any
22 other person in the community.

23 So the standard here isn't whether Alternative
24 Directions has always been able to prevent every single person
25 from possessing a cell phone. The standard is whether the

1 condition will reasonably assure the appearance of the person
2 as required and the safety of any other person in the
3 community.

4 While this is a presumption case, the burden of
5 persuasion remains with the government, and I think here the
6 presumption is easily rebutted. As the Court is aware, it's a
7 relatively light burden. Mr. Ogoshi has no prior arrest or
8 convictions. He is in his second year of college. He has ties
9 to his local community and a history of being involved in his
10 local church. He cannot flee. He doesn't have the documents
11 to flee. He doesn't have the money. He doesn't have any
12 contacts in the United States or family that would be able to
13 assist him in fleeing.

14 I think that this is also a complicated offense, so
15 when we move into the 3142(g) factors, and we start to talk
16 about the nature and the circumstances of this offense, I don't
17 think the government is appropriately characterizing how it
18 alleged that this offense occurred. It's not a simple offense
19 that occurred simply with a phone and an Instagram account.
20 The government alleged that six -- six individuals were
21 involved. One individual had to go and hack the social media
22 accounts. That individual would then sell the social media
23 accounts. The government alleges that Samuel, Samson and
24 others purchased those accounts. Then there is alleged to be
25 someone who provided financial support to all the people

1 involved here.

2 It wasn't as simple as the government alleges that
3 someone pay this extortion money and it goes right into
4 Ogoshi's bank account. The government alleges that there was
5 an individual in the United States who had to receive the
6 money, send it to this middleman person who the government has
7 identified to the Nigerian authorities. We -- we identified
8 that person based on government records as FE in our brief.
9 That person had to convert the money to cryptocurrency and then
10 eventually converted it to Nigerian currency. So this isn't an
11 offense where someone can go out and simply get a phone and
12 immediately commit an offense in the way the government alleges
13 that it was committed here.

14 There is no indication, based upon the record, that
15 any of the Defendants here were blackmailing people in person
16 as the government alleges that Mr. Ogoshi could do at the
17 halfway house. I am not really sure what and the means of that
18 blackmail would be and how Mr. Reust believes that -- that
19 Samuel Ogoshi would go out and do that at the halfway house,
20 but there is no indication on the record of any similar
21 activity in the past.

22 I think that when we look at the nature of this
23 offense under 3142(g)(1), I think the Court should also
24 consider that as far as the penalty enhancement is here, it's
25 sort of a novel theory about the government. Mr. Mekaru said

1 at the initial appearance that he was not aware of anyone being
2 punished previously under this theory where -- where the
3 alleged victim committed suicide, and so I think that
4 Mr. Ogoshi does have reason to stick around and participate in
5 his trial.

6 Additionally, this is an -- ultimately a financial
7 offense. The Court took issue at the last hearing with the
8 government's characterization of it as a sextortion case,
9 because ultimately it's an extortion case. It's a case that's
10 alleged to be -- was committed for money, and it's different
11 from cases under the same statute where the offense was alleged
12 to be committed for sexual gratification, because I think those
13 types of Defendants have a higher rate of recidivism or would
14 be more likely to recidivate than Defendants in this situation.

15 And I would just note that in a similar case where the
16 government alleged that there were 270 victims in this district
17 of sextortion that was committed for sexual gratification, in
18 that case, the government, on its own motion, made a bond
19 that -- made a motion to release the person on an appearance
20 bond, and that was the Brandon Le case that Judge Jonker just
21 sentenced last week. So I don't think that the nature of this
22 offense on its own suggests that there needs to be pretrial
23 detention.

24 I think when we look at the weight of the evidence
25 against the person where the weight goes to dangerousness, not

1 the weight of his guilt, I think that signs point that
2 Mr. Ogoshi is unlikely to engage in criminal conduct while on
3 bond. It's a complicated case. He won't have the means of
4 committing the offense while in a halfway house. The halfway
5 house can observe his conduct, can watch him and can reasonably
6 assure that he will not possess a cell phone there. Again, he
7 won't have the financial means to purchase one and he wouldn't
8 have the means to commit the offense.

9 Mr. Ogoshi's history and characteristics, while are
10 not tied to this country, I think suggest that he is a person
11 who has been a person of character, and that I don't think that
12 the fact that those ties are to Nigeria should weigh against
13 him here, because they show that he is someone who can't --
14 well, let me put it this way. It's not -- it's not like he can
15 flee back to Nigeria to escape prosecution here. He is in a
16 foreign country that he has never visited before. The
17 government and the Court can monitor him by placing him at a
18 halfway house and on location monitoring so they'll know where
19 he is at all times. If he were to cut off that location
20 monitoring, probation would know, and I don't think he would
21 get very far. So I don't think the risk of nonappearance on
22 his own volition is high here.

23 The government and -- and obviously we take issue with
24 what role an ICE detainer plays here. I don't think that there
25 is binding authority on the Court in how to weigh or to

1 consider whether or not to consider that ICE detainer, but I do
2 think that there are a number of cases, including the cases in
3 the Sixth Circuit that say the Bail Reform Act and immigration
4 operate separately and the statutes that govern them are
5 separate statutes and operate independently.

6 I do think it's -- it's worthwhile noting that the
7 government cited the United States v Valadez-Lara case in its
8 brief for the proposition that the Court should consider the
9 ICE detainer in determining Mr. Ogoshi's risk of nonappearance.
10 However, I -- I think the -- the reliance on Valadez-Lara is
11 actually favorable to the Defense there, because the Court
12 there held that, well, while it may be a factor for
13 consideration that other courts have cautioned that the
14 existence of an ICE detainer does not allow the Court to
15 speculate on the eventual results of immigration proceedings,
16 and the Court then held, therefore, when considering
17 Defendant's eligibility for release, the Court will assess
18 whether an immigration detainer could at -- sorry. The Court
19 will assess defendant's intentional risk of nonappearance and
20 not whether an immigration detainer could at some point in the
21 future result in his removal. So in Valadez-Lara case, the
22 court actually only considered intentional risk of
23 non-appearance, which is what we think the Court should
24 consider here.

25 And I think I am going to say one -- or quote one

1 other case, which is a district court in the Northern District
2 of Ohio, citing another case out of Minnesota, and that's the
3 United States v Arnodo-Mercado. The Westlaw cite is 2023,
4 Westlaw 2633543, and it said, this Court and many others have
5 long declined to use the government's own decision to remove an
6 alien during the pendency of his criminal prosecution to
7 preclude release.

8 The problem here is not that the Defendant will absent
9 himself from the jurisdiction, but the two Article II agencies
10 will not coordinate their responsive efforts. This Court ought
11 not to run interference for the prosecuting arm of the
12 government. Put another way, the fact that ICE will not agree
13 or cannot be trusted to delay deportation, that separate
14 agencies within the executive branch do not communicate and
15 cooperate cannot serve to deprive a Defendant his rights under
16 the Eighth Amendment and the Bail Reform Act.

17 So I would ask the Court to consider that authority
18 and not consider the immigration detainer or Mr. Ogoshi's
19 immigration status in making a decision under the independent
20 Bail Reform Act.

21 I think looking at all of the factors that the Court
22 must consider under 18 United States Code 3142, I think he has
23 rebutted the presumption. I think that 34 -- 3142(g) factors
24 favor in -- weigh in favor of release, and we would ask for
25 release to a halfway house under conditions required by the

1 Adam Walsh Act and condition that he not be allowed to possess
2 a phone or access the Internet or any other conditions the
3 Court deems appropriate.

4 THE COURT: Thank you, Mr. Tilton.

5 Ms. Kelly?

6 MS. KELLY: Thank you. Thank you, Your Honor. And
7 again, I'll try not to duplicate the efforts from Mr. Tilton.

8 In order to rebut the presumption Mr. Samson Ogoshi
9 needs to produce some evidence that he will not flee or
10 endanger the community if released. I have talked about -- in
11 my proffer about the issue about fleeing. I think the fact
12 that Samson turned himself in voluntarily, he was not arrested,
13 he went to the EFCC knowing that his brother had been arrested
14 a week prior on the allegations, willingly talked, apparently,
15 with the EFCC and the FBI, I think there are conditions that
16 this Court could place on him, including the halfway house,
17 including a location monitoring, to ensure that he is not able
18 to flee.

19 Obviously, I have talked about he has no documents to
20 travel. He has no money to travel. He has no access to
21 travel, nor does his family have that money or access to do so.

22 Samson has no prior arrests or convictions. He has
23 completed secondary school, which would be high school here.
24 He has had some apprenticeships, had some skills, and was
25 accepted into college.

1 In relation to the endangering the community if
2 released, again, Mr. Samson Ogoshi and Samuel Ogoshi have now
3 been in custody since January, have had no incidents with other
4 members of those that are in detention. No issues related to
5 me from any of the arresting agencies that Samson has had any
6 problems.

7 The government, in their brief, talked a bit about the
8 allegations and related -- in relation to Samson. Samson is
9 not charged in Count 1, as this Court knows, but the government
10 proposes that Samson on the same date of 3-25 to 3-6 also
11 mentioned, I am going to make you commit suicide. And I just
12 wanted to -- to note for the Court, as the -- the government
13 has stated in their brief, the alleged search of the Michigan
14 suicide, that was on April the 1st. So you have these two
15 conversations that are allegedly going on on the dani.robertts
16 account on the same day.

17 Samson was asked by the authorities, both by EFCC and
18 by the FBI, which is in the exhibit, did he ever say, did you
19 commit suicide? Samson was shown text messages from the FBI,
20 which is in the exhibit of his interview, and he said on the
21 recording, it's not in the report, on the recording he said, I
22 didn't text that.

23 Now, I have not looked at all the discovery. The
24 government has allowed us to come over and -- and review some
25 of it. I am sure that if there was some statement that Samson

1 made after April the 1st about committing suicide or using
2 language like that, I am sure it would have been in an exhibit
3 here in front of the Court.

4 Mr. Reust talked about there was someone communicating
5 with a girlfriend. Again, I don't have those text messages. I
6 don't know those dates. The earliest date that I have is the
7 date provided by the government, which would be April the 1st,
8 which is when the searches take place. So I don't have
9 anything after that that's related to Samson and those
10 statements like that.

11 Also, in Exhibit 8, Samson told the FBI agents
12 allegedly that they -- they were targeting colleges and
13 universities in the United States. Not high schools, not
14 middle schools, but searching for colleges and universities,
15 talking about programs and studies that they were doing in
16 college, not looking for minors. And I know Mr. Reust has said
17 that there were additional photos of minors. I don't have that
18 discovery yet.

19 When Samson was interviewed by the FBI in February,
20 again, without a lawyer present, so this would have been the
21 fourth time that he was interviewed without a lawyer present,
22 when he is reviewing that advice of rights form, which is
23 submitted to this Court as an exhibit, Samson, two minutes into
24 the interview, says, but maybe some few questions if I can't --
25 I am not able to answer I'll need to get advice from my

1 lawyer -- or a lawyer. Excuse me. And then he was interviewed
2 for another hour and-a-half by FBI agents.

3 Samson also talked about Forex exchanging that he was
4 doing with FBI agents, other work that he was doing, instead of
5 continuing to allegedly commit this crime. But when, again,
6 asked by the agents if he sent those messages on March the 25th
7 into the 26th to victim 2, who is 21 years old, he adamantly
8 said no.

9 I agree with Mr. Tilton that this is a complicated
10 case. It is not as simple as Mr. Samson Ogoshi sending a
11 message and receiving the money right back. As Mr. Tilton
12 mentioned, there were, at the request of the FBI, six people
13 that were to be arrested in January of this year that were
14 related. Others that were in charge of getting the hacked
15 accounts. Others that were charged of the finances. There is
16 a portion in these statements where Mr. Samson Ogoshi talks
17 about receiving a portion of -- for what he did.

18 But with relation to the danger to the community, I
19 think Samson has shown that he can be trusted. That he is not
20 a danger to the community in West Michigan. He will not have
21 access to a phone. He has no access to money or finances. I
22 agree with Mr. Tilton that the -- the Bail Reform Act does not
23 permit pretrial detention just based on an ICE detainer. I
24 would note that in the Fifth Circuit in the United States
25 versus Baltazar-Sebastian, which is 990 F.3d 939, it is a 2021

1 case under 8 CFR § 215(a)(2) an alien shall not depart the
2 United States if her departure would be prejudicial to the
3 interests of the United States. As a party to a pending
4 criminal case an alien's departure is deemed prejudicial. 8
5 CFR section 215.3(g). The departure is not prejudicial,
6 however, if the appropriate prosecuting authority provides
7 consent. I would not expect the prosecuting authority here to
8 provide consent that Mr. Samson Ogoshi or Samuel Ogoshi be
9 deported pending these judicial proceedings.

10 I think the 3142(g) factors do -- would weigh in favor
11 of Samson Ogoshi. He acknowledges the charged offense is
12 serious, but again, the purpose of the alleged conspiracy is
13 for financial gain. He has no prior criminal history. He
14 voluntarily surrendered to the authorities. He has been in
15 custody since January without incident. No history of
16 controlled substance use or possession. Twenty years old. He
17 will be 21 in November. Soon to be a college student. No
18 prior criminal history. He has some work experience. He
19 understands that he will be subject to certain terms and
20 conditions if released by this Court, including a tether,
21 including location monitoring, including no phone, and we would
22 be asking for that release. Thank you.

23 THE COURT: Thank you, Ms. Kelly.

24 Mr. Reust, some very brief rebuttal argument?

25 MR. REUST: Yes, Your Honor.

1 Your Honor, I want to -- I'll go briefly through
2 things as they were presented. I think both counsel spoke
3 about how this was a complicated scheme, and, you know, parts
4 of this scheme were indeed complicated, but the part that was
5 blackmail is the part that matters here, and it's the part that
6 both Defendants know how to do and did and returned to after
7 learning about victim 1's death.

8 Samuel's counsel refers to the ties to the Nigerian
9 community as being irrelevant, but the statute asks about the
10 length of residence in the community being the community of
11 prosecution. It's not asking about the -- the length of time
12 that somebody has lived in a community in a foreign country.
13 So the focus should be on the ties to West Michigan. That's
14 what gives somebody an incentive not to leave West Michigan and
15 to appear for hearings in West Michigan, not the ties that they
16 might have to Nigeria.

17 Both counsel speak about an ICE detainer alone not
18 being enough, and, you know, I might agree with that. That's
19 not the primary reason why the government believes that these
20 Defendants are a risk of nonappearance. But in addition to
21 that, there is more than an ICE detainer here. There is
22 Exhibit 9, which is the affidavit from the person that would be
23 responsible for enforcing this, and who is saying that if they
24 were released, in fact, not only is there a detainer but they
25 would be placed in custody, and -- ICE custody, and they would

1 be deported. And I'd note, you know, as I do in the brief,
2 that it's not just ICE saying that that's what should happen
3 here. It's Congress that said it in the relevant statutes as
4 well. Congress has said, not just the executive government or
5 the executive branch of the government, that these Defendants
6 should not be release and if they are they should be detained
7 and deported.

8 And then Ms. Kelly, you know, acknowledges or states
9 that Samson said he self-reported or that he did self-report to
10 police, the EFCC, but her brief further states that he did that
11 at least because he was told that the police would let both him
12 and Samuel go if he did. It's not unusual for police even in
13 the U.S., you know, to create some kind of a Ruse to get
14 someone to self-report like that, and those were the conditions
15 under which Samuel reported there.

16 I just return to the fact that the Defendants in this
17 case have shown that they are a danger to this community. They
18 showed that after they did that they returned to the same kind
19 of activity they had been engaged in that led to the problems
20 that they caused in this community, and there are no conditions
21 that this Court can place on them that will reasonably assure
22 their appearance and that will keep this community safe, Your
23 Honor. Thank you.

24 THE COURT: Thank you, Mr. Reust.

25 The Court's consideration of bond begins with the

1 Eighth Amendment to the United States Constitution, which
2 prohibits excessive bail. The Eighth Amendment's protections
3 are made statute in the Bail Reform Act beginning at 18 United
4 States Code § 3141, § 3142 of which
5 requires the Court to release a Defendant on bond unless the
6 Court concludes that there is no condition or combination of
7 conditions that will reasonably ensure the Defendant's
8 appearance and the safety of the community. Certain federal
9 crimes give rise to a presumption in favor of detention. This
10 is one of them.

11 § 3142(g) of the act lays out the specific factors
12 that I am to consider in reaching my decision. Those include
13 the nature and circumstances of the offense, specifically
14 whether it involves a crime of violence, which this offense is
15 classified as, am I not right, Mr. Reust?

16 MR. REUST: That's correct, Your Honor.

17 THE COURT: The weight of the evidence against the
18 Defendants is the second factor. I would say that there is
19 substantial evidence against both Defendants. There may be
20 questions about how that -- some of that evidence was
21 collected, but at the end of the day, this factor is accorded
22 the least weight in my analysis for bond because both
23 Defendants are still cloaked with the presumption of innocence.

24 The -- the weight of the evidence is also more
25 difficult for me to assess here because the government is

1 pursuing a novel application of the facts of this case to the
2 statute. So we don't have -- I, at least, don't have any way
3 to assess the likelihood of success as the case moves forward,
4 I mean, based upon case law. Other factors, the history and
5 characteristics of the Defendant, including character, physical
6 and mental condition, family ties, employment, resources,
7 education.

8 As Mr. Tilton and Ms. Kelly have covered in detail, so
9 I am not going to go through it in the same detail they did,
10 both of these Defendants were born and raised in Nigeria --
11 Nigeria in Lagos. Both have essentially lived with their mom
12 and dad their entire lives. The parents, married for a long
13 time. Dad retired from the Nigerian military. Mom runs an --
14 essentially a food cart selling soft drinks in her neighborhood
15 to support the family.

16 The family is close. They are religious, go to church
17 three times a week. It was a good environment. Both of these
18 Defendants were good students, did well in high school. Both
19 accepted into college.

20 And I would note for the record that the government,
21 in some of its briefing, refers to the victim in this case as a
22 boy, which he was, but the Defendants are a little more than
23 boys themselves, and terrible and tragic decisions were made in
24 this case, and at the end of the day at what seems likely to me
25 is that two families are going to be destroyed as a result of

1 the events underlying this case, and that is very sad.

2 Let's see, as to Samuel, he is 23 now. As Mr. Tilton
3 laid out, single, doesn't have any children, no criminal
4 record, has never been arrested, never been in trouble as far
5 as we know for anything. Doesn't have a passport. Has never
6 traveled outside of Nigeria. In fact, no member of his family
7 has ever traveled outside of Nigeria. As a student, doesn't
8 have any income expenses, assets or liability. Liabilities, he
9 is completely financially reliant on his parents.

10 His physical health is good. Mental health good.

11 Samson's story much the same. Obviously raised in the
12 same household with his two brothers. Lives -- lived with his
13 parents his whole life. He is 20 now. Also single, no kids,
14 no passport, never traveled outside Nigeria, no employment
15 history. Was training to be a shoe cobbler. No assets,
16 liabilities, income or expenses.

17 Physical health is good. Mental health good. He
18 reports that he drank alcohol one time. Also no criminal
19 history. No arrests.

20 Other factors that I consider in reaching my decision,
21 I would include the ICE detainer among those. I am not
22 persuaded by the government's argument with respect to the ICE
23 detainer. The government, and I don't know if it's Agent
24 Osborne. Let me pull up his -- Assistant Field Director
25 Osborne, in his declaration, argues, or says, attests to the

1 fact that these Defendants would be removed if I released them.

2 In its sentencing, or in its bond memorandum, oops,
3 the government argues and Mr. Reust argued from the podium a
4 moment ago that Congress has directed ICE to detain and deport
5 Defendants if they are released on bond. To that I would say
6 this. Congress also enacted the Bail Reform Act, which
7 includes a presumption of release. Congress enacted the
8 statute under which you charged these Defendants. Congress
9 provided for the enhanced penalty scheme that you are seeking
10 to enforce here apparently for the first time. If there is a
11 problem in that system, it's Congress that needs to fix it.
12 Not the Court. I am not taking a side. When the government is
13 arguing essentially against itself, two branches of the
14 executive branch have a disagreement, it's Congress's to fix.
15 So the existence of the ICE detainer will play no role in my
16 decision and I give it no weight.

17 Let's look, then, at the two issues at play here.
18 First, a danger to the community. As I said earlier, the
19 government's burden of proof on that issue is clear and
20 convincing evidence. A fairly heavy standard in the law.

21 I am equally unpersuaded by the government's arguments
22 that these Defendants pose a danger to the community in that
23 the government would have me believe if I release them they are
24 likely to continue in the same behavior that brings them before
25 the Court today. I would say as a general matter it is

1 extremely unusual for a Defendant released on bond to continue
2 with the offense conduct that resulted in the charges in the
3 first place. There are exceptions. Drug sales being probably
4 the one I see most often. But these two Defendants are plucked
5 from Lagos, Nigeria, flown half way around the world, separated
6 from their families, and landed here in Grand Rapids, Michigan,
7 which must seem like the far side of the moon to them.

8 They are facing potential life in prison. Potential
9 long mandatory minimum sentences. Their lives up to the time
10 they became involved in this scheme seemed to have been rule
11 following lives. We have no evidence, no information to
12 suggest -- you know, there is no history of long supervision by
13 juvenile authorities in Nigeria or anything which would lead me
14 to believe that they are not able to follow orders given them
15 directly.

16 So -- and they also don't seem to me to be
17 unintelligent. I think they appreciate the gravity of their
18 situation. That's been my impression of them when I have had
19 them in Court in front of me.

20 And so I find the government has not met its burden
21 and it would be difficult, since the only reason we're here is
22 because the victim died, which is tragic, but if the victim
23 hadn't died my guess is we wouldn't be sitting in this
24 courtroom and these charges wouldn't have been brought.

25 The amount of money involved in the whole -- if we

1 look at the whole scheme, is minimal. I doubt the United
2 States would have -- would have spent time and money pursuing
3 it otherwise.

4 So it's the tragic death of victim 1 that brings us
5 here. I don't -- I am not persuaded that these Defendants
6 would do anything like this again.

7 Moving onto risk of nonappearance. The Defendants
8 argue, you know, based upon their histories in Nigeria, that,
9 and some of the same factors that I have just laid out, that
10 they aren't a danger of nonappearance. This is the more
11 troubling issue for me, because they are basically boys, and
12 they are halfway around the world separated from their
13 families, facing tremendous penalties if ultimately convicted
14 in this case. They know no one here. They have no way to
15 support themselves. They aren't -- would not be allowed to
16 work in any lawful occupation in this country anyway. They
17 have no support system.

18 The halfway houses -- there are problems at the
19 halfway houses. Those of us who work with them regularly know
20 that. I don't know that for these two Defendants Alternative
21 Directions, CAP or KPEP or any of those places would be safe or
22 appropriate for them.

23 And I can see, as young men, boys, panic as we get
24 down the trail in this case, flight, which ultimately would
25 prove futile, because nobody escapes the United States. When

1 it commits its will to finding a person, a person gets found
2 and brought back, but I could see that happening, and when
3 things like that occur, there are all kinds of consequences
4 which can follow, and I don't want to see any of those kinds of
5 consequences come to pass. There has been enough tragedy in
6 this case.

7 It's my finding, based on all the evidence, that the
8 government has met its burden of proving by a preponderance of
9 the evidence that these Defendants are a risk of nonappearance
10 in the case and for that reason I am ordering them held in
11 custody while the case is pending.

12 Mr. Reust, anything else from the United States?

13 MR. REUST: No, Your Honor. Thank you.

14 THE COURT: Mr. Tilton?

15 MR. TILTON: No, Your Honor. Thank you.

16 THE COURT: Ms. Kelly?

17 MS. KELLY: No, Your Honor. Thank you.

18 THE COURT: We'll be adjourned.

19 (Proceeding concluded, 12:17 p.m.)
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C E R T I F I C A T E

I certify that the foregoing is a transcript from the
Liberty Court Recording System digital recording of the
proceedings in the above-entitled matter to the best of my
ability.

/s/_____

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